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1967

Supreme Court of the United States

No. ~~1448~~ 216

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

PETITION FOR CERTIORARI

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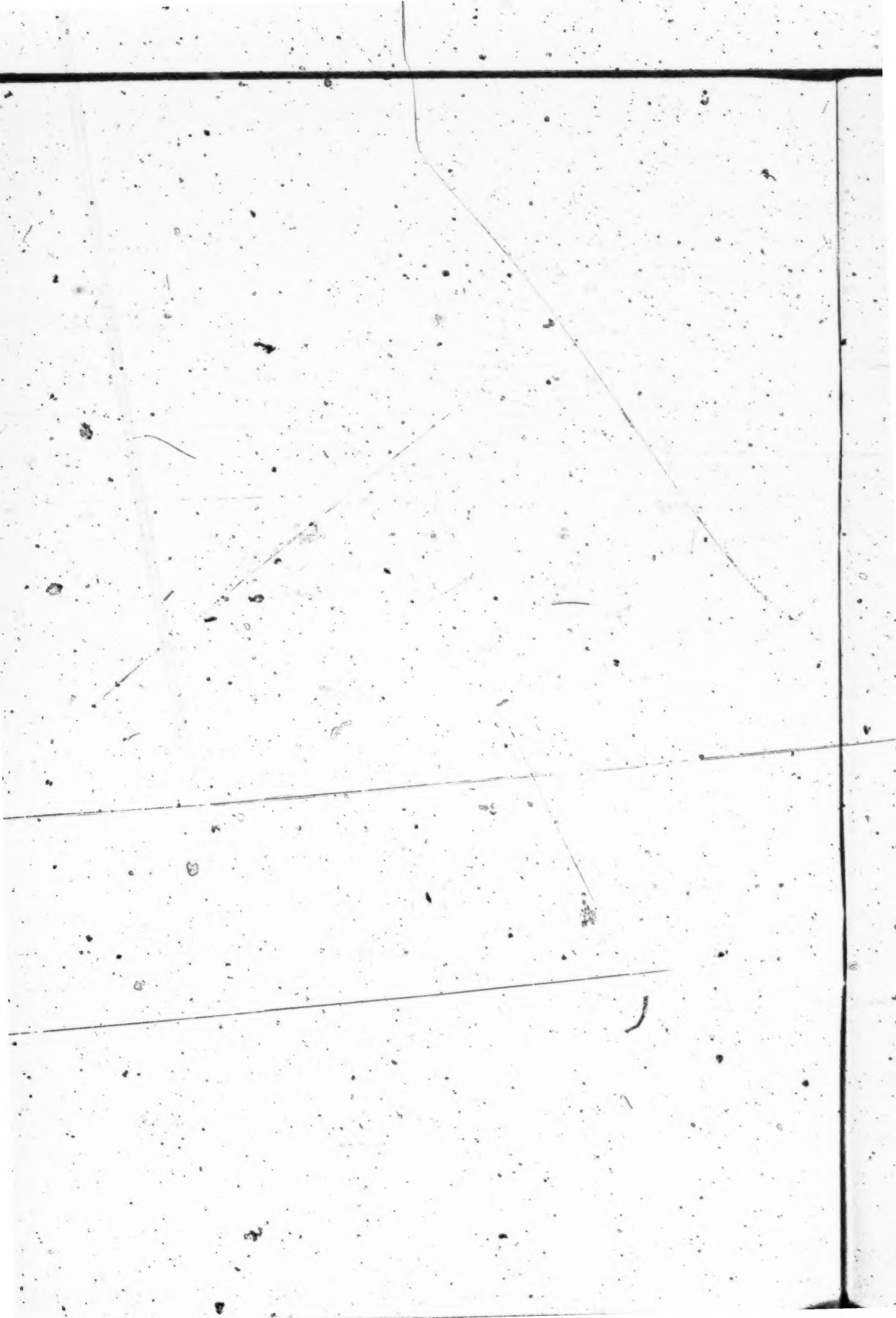

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To the Honorable the Chief Justice and the Justices of the Supreme Court of the United States:

OPINIONS IN COURTS BELOW

There were no written opinions in the courts below.

GROUNDS FOR JURISDICTION

The judgment sought to be reviewed is a final judgment by the Supreme Court of Appeals of Virginia, dated and entered on the 7th day of March, 1967, which affirmed a conviction of the petitioner for first degree murder in the Circuit Court of Halifax County, Virginia pursuant to a trial held on the 29th and 30th days of July, 1966.

Petitioner seeks reversal of the aforesaid final judgment on the grounds that the Supreme Court of Appeals of Virginia should have reversed the conviction of the petitioner because the petitioner's constitutional rights, as set forth in *Miranda* v. *Arizona*, 384 U.S. 436 (June 13, 1966),* specifically the right against self-incrimination guaranteed by the Fifth Amendment to the United States Constitution and the right to counsel guaranteed by the Sixth Amend-

* Hereinafter referred to as *Miranda*.

ment, were not protected at his trial to his prejudice. Because the grounds for this petition are based on federal constitutional rights specifically and duly set up and claimed by the petitioner in the courts below and re-asserted here, it is submitted that this Court has jurisdiction to review the final judgment of the Supreme Court of Appeals of Virginia in this case by a writ of certiorari. For this invocation of jurisdiction, petitioner relies upon the statutory provisions of 28 U. S. C. § 1257 (1964), which provides in part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> By writ of certiorari
>
> * * *
>
> where any . . . right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the United States."

QUESTIONS PRESENTED

I. Whether the use in evidence in a post-*Miranda* trial of a confession obtained in police custody in the absence of counsel violated the petitioner's Fifth and/or Sixth Amendment rights where prosecution evidence tended to corroborate the testimony of the petitioner that the confession was induced by a promise that freedom on bond would be thereby facilitated.

II. Whether such use violated Fifth and/or Sixth Amendment rights where the confession was obtained after a police officer overrode the petitioner's attempts to invoke his right to silence and indicated to him that silence was a de facto admission of guilt?

III. Whether such use violated Fifth and/or Sixth Amendment rights where the petitioner did not understand his right to counsel prior to first confessing?

IV. Whether such use violated Fifth and/or Sixth Amendment rights where the petitioner was never advised of his right to court-appointed counsel?

V. Whether such use violated Fifth and/or Sixth Amendment rights where the petitioner, a 23 year old mental defective with a history of near-fatal spinal meningitis, confessed to a version of facts subject to prior police deduction after having been subject while in police custody to sickness, cold, alternating verbal abuse and intimidations of friendship from a police officer and other forms of psychological pressure?

CONSTITUTIONAL PROVISIONS

Petitioner relies upon the Fifth and Sixth Amendments to the United States Constitution which are set forth below in their entirety:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U. S. CONST. amend. V
>
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial

jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. U. S. CONST. amend. VI

STATEMENT OF THE CASE

(A) Material Proceedings In The Lower Courts

The petitioner was tried in the Circuit Court of Halifax County, Virginia on the 29th and 30th days of July, 1966 on a charge of first degree murder in the death of Jeffrey Ronald Brenner. (R. 5-11)* A preliminary hearing had been held on June 24, 1966 (T. 406-407)† after which the petitioner had been bound over to a grand jury, which had returned an indictment during the July, 1966 term of court. (R. 2)

The federal question sought to be reviewed is the question whether the admissibility into evidence at the trial of incriminating statements made by the petitioner while in

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* References to the Record are indicated by the letter R., followed by the appropriate page number, except that references to the Transcript of the trial on the 29th and 30th of July, 1966 are indicated by the letter T., followed by the appropriate page number of the Transcript. (The entire Transcript of the trial on the 29th and 30th of July, 1966 was packaged together as an entirety by the Clerk's Office of the Circuit Court of Halifax County, Virginia as page 50 of the record. This treatment of the Transcript was left unchanged when the Record was made up by the Clerk of The Supreme Court of Appeals of Virginia.)

† Reference to that part of the Record contained in the Transcript of the trial on the 29th and 30th of July, 1966 are indicated by the letter T., followed by the appropriate page number of the transcript.

police custody and in the absence of counsel violated the petitioner's Fifth and/or Sixth Amendment rights as set forth in *Miranda*. This question was raised in the Courts below in the following manner:‡

Prior to the introduction of the confession into evidence, counsel for petitioner, during a conference in the chambers of the Circuit Court of Halifax County, objected to the introduction of any confession of the petitioner into evidence. (T. 85) Pursuant to an agreement reached during the conference in chambers (T. 84-89) the evidence of the circumstances surrounding the obtaining of the confession was first heard by the Court in the absence of the jury. (T. 90-192) Counsel then argued the admissibility of the evidence, (T. 191-222) counsel for the petitioner contending that the evidence should be excluded because the petitioner's Constitutional rights as set forth in *Miranda* had not been proven to have been complied with. (T. 196-216, 219, 222) The Court ruled that the confession was voluntary and complied with the spirit of *Miranda* and allowed it into evidence. Counsel for the petitioner took exception to this ruling. (T. 223) This exception was reiterated in the presence of the jury just prior to the testimony of the confession. (T. 227-228) Later, when additional evidence regarding the circumstances surrounding the confession revealed that the petitioner had attempted during the course of his interrogation to invoke his right to silence, counsel for the petitioner moved again for exclusion of the evidence, (T. 245) was overruled (T. 245) and excepted to the ruling

‡ A brief summary of the manner in which the federal question was raised is set forth in this petition with reference to the portions of the record relied upon; these portions are set forth verbatim in Appendix A; because they are voluminous, Appendix A is separately presented in compliance with Rule 23 (f) of the Rules of The Supreme Court of The United States.

of the Court. (T. 245) At the conclusion of all the evidence, counsel for the petitioner moved for a mistrial on the grounds that the admission of the confession into evidence had been prejudicial error. (T. 456) This motion was overruled (T. 456) and exception was taken. (T. 456)

The jury found the petitioner guilty of murder in the first degree and sentenced him to forty years confinement in the state penitentiary. (T. 459-461, R. 25) The petitioner moved that the verdict of the jury be set aside (T. 462, R. 40-42) and a new trial granted (R. 40-42) on the grounds that the admission of the confession into evidence violated the defendant's Constitutional rights as set forth in *Miranda*. (R. 40-42) This motion was argued on October 8, 1966 in the Circuit Court of Halifax County. (R. 40-42) On October 10, 1966, the Court overruled the motion, stating that the confession was voluntary and that *Miranda* had been complied with. (R. 31-32) On the same day, the Court entered final judgment on the verdict. (R. 28)

In compliance with Rule 5:1 § 3(e) of the Rules of the Supreme Court of Appeals of Virginia, transcripts of the record and stipulation of counsel were signed and certified by counsel, signed by the Court and filed in the Clerk's Office of the Circuit Court of Halifax County on December 3, 1966. (R. 38, 39, 42; T. 471-72) In compliance with Rule 5:1 § 4, Notice of Appeal and Assignment of Error and an Amended Assignment of Error were filed in the Clerk's Office on December 5, 1966. (R. 43-46) The Assignment of Error, as amended, relied solely upon the admission of the confession into evidence as contrary to the petitioner's Fifth and Sixth Amendment rights as set forth in *Miranda* as grounds for reversal of the final judgment of conviction in the Circuit Court of Halifax County. (R. 43-46)

In compliance with Rule 5:1 § 6, counsel for petitioner on January 10, 1967 designated parts of the record to be

printed in event a writ of error be granted by the Supreme Court of Appeals of Virginia. (R. 47-49) In compliance with Sec. 8-475 and Sec. 8-463 of the Virginia Code and Rules 5:3 and 5:4 of the Rules of the Supreme Court of Appeals of Virginia, the record in the case and a petition for writ of error and supersedeas was filed in the Supreme Court of Appeals at Richmond, on February 9, 1967, (R. 50A, 51, 55-56, and see notations of receipt of Transcript and Table of Contents of Circuit Court of Halifax County) the grounds stated in the petition for appeal for reversal of the final judgment of conviction were based solely on the contention that the petitioner's Constitutional rights as set forth in *Miranda* had been violated by admission of the confession into evidence. (R. 51-56)

On March 7, 1967, the Supreme Court of Appeals of Virginia denied the petition for a writ of error and affirmed the judgment of the lower court, the effect of which under the provisions of Sec. 8-476 of the Virginia Code was a final judgment upholding the conviction of the petitioner. (R. 57)

(B) Statement of Material Facts

The confession in this case was obtained beginning at approximately 8:15 p.m. on January 19, 1966. (T. 96, 228) Prior to that time the petitioner had been in the custody of police authorities for over seven hours and forty minutes, beginning sometime before he was formally committed to jail at 12:40 p.m. (T. 92-93, 125, 162, 225-226) While in custody and before the confession was first obtained, the petitioner was interrogated twice by Mr. C. T. Coates, Halifax County sheriff, alone in the sheriff's office, once in the middle of the day and again beginning about 6:30 p.m.

or 7:00 p.m. (T. 93, 110, 152, 153-154, 158, 163, 166-167, 225-226, 270-271, 275-276)*

The confession was first obtained orally at 8:15 p.m. in the sheriff's office in the presence of the sheriff and two deputies, Mr. Roy Pruitt and Mr. Monroe Anderson, (T. 110-111, 124) after the petitioner had sent word that he wanted to see the sheriff. (T. 94, 97, 167, 226, 268, 273) Immediately after the oral confession was obtained, the sheriff turned on a tape recorder and obtained a taped confession. (T. 110-111, 124) The next day the taped confession was transcribed (T. 131, 227) and signed by the petitioner. (T. 97-98, 130-131, 137, 169, 227, 269, 274)

At none of these times did the petitioner have the benefit of legal counsel, the petitioner not being represented by counsel in the case until over a week later. (T. 187-188, 270)

The petitioner is mentally defective. Using the Wechsler Adult Intelligence scale, he has a full scale Intelligence Quotient of 67, a verbal Intelligence Quotient of 71 and a performance Intelligence Quotient of 65. (T. 150, 396) The authorities at Southwestern State Hospital reported that "It is believed by the psychologist that he is able to function in the lower limits of mental deficiency, mild." (T. 150, 396)

At the age of nine, the petitioner was afflicted with an almost fatal case of spinal meningitis. (T. 160-161, 383,

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* There was no outright testimony that the petitioner and the sheriff were alone during the second interrogation, beginning at approximately 6:30 p.m. or 7:00 p.m. However, this is implicit in all of the testimony about this interrogation. In addition, no one except the sheriff and the petitioner testified about what went on during this interrogation. The only Commonwealth witnesses besides the sheriff who saw the petitioner in the jail that day, Deputy Roy Pruitt and Deputy Monroe Anderson, testified that they were not present during this interrogation. (T. 270-271, 275-276) The sheriff testified that he and the petitioner were alone during the first interrogation in the middle of the day. (T. 152)

444-445) He never passed an academic subject in his life. (T. 159-160) He was pushed up from one class to the next despite complete failure in academic grades (T. 160) through the sixth grade, when he dropped out of school. (T. 159)

At the time of the confession the petitioner was twenty-three years old. (T. 228) He was working at that time as a warp mover in a local mill. His duties consisted of picking up with his hands one end of a steel warp with another worker on the other end and moving the warp a short distance. (T. 172-176) The petitioner testified that the only worry involved in the job was to make sure not to drop the warp on another worker. (T. 176)

The petitioner's brother-in-law testified that the petitioner was "weak-minded." (T. 386) "I think he can easily be led. By anybody . . . , He's weak. The boy is weak-minded. He has no education. So therefore, he just can't concentrate one question from another hardly, not unless you explain the whole detail out to him." (T. 386)

There is a direct conflict in the testimony as to whether the petitioner was ever advised of any of his constitutional rights before he first confessed. However, the tape recording, made after the oral confession was obtained, (T. 110-111, 124) conclusively established that even if the petitioner was advised of his constitutional rights before he first confessed, he nevertheless did not understand that he had a right to legal counsel prior to this initial confession.

The relevant portion of the taped statement was as follows:

> SHERIFF: You understand Frank, that you don't have to make any statement if you don't want to. You understand that?
>
> PETITIONER: Yes.

SHERIFF: You understand that any statement you make can be used against you in court. You understand that?

PETITIONER: Yes.

SHERIFF: You understand that you have a right to an attorney before you make a statement. You understand that?

PETITIONER: That's right. I reckon. I don't know about that.

SHERIFF: Now wait a minute. You have the right to an attorney before you make any statements. You understand that?

PETITIONER: Oh, yes. (T. 95, 111-112, 228-229)*

The petitioner testified that this dialogue, coming after he had already confessed, was the first time he was ever advised of any of his constitutional rights (T. 163-164) and that even then he did not know the meaning of the word "attorney," (T. 159, 161, 164-165) although he would have understood what was meant by the word "lawyer." (T. 159)

The sheriff testified that prior to the taped dialogue the petitioner had been advised three times of his "rights," (T. 92, 94-95, 106-111, 226-227) once at the beginning of the initial interrogation at midday, again at the beginning of the second interrogation at about 6:30 p.m. or 7:00 p.m. and the third time just before the oral confession was obtained. (T. 106-111)

However, there was never any testimony by anyone that the petitioner was ever advised of his right to court-appointed counsel if he could not afford a lawyer. He was not

* For an analysis showing that the petitioner's statements that he didn't "know about" his right to counsel came after he had already confessed, see Appendix B.

advised of that right on tape: (T. 95, 111-112, 228, 229)

There was no testimony whatever by the sheriff or anyone else that if the petitioner was advised of any of his rights before the oral confession was obtained, he indicated in any manner that he understood the substance of what was being told him.*

There was no evidence at the trial that if the petitioner was advised of his constitutional rights he ever stated that he wanted to waive these rights.

On the contrary, it was shown by the sheriff's testimony that the petitioner attempted to invoke his right to silence, both at midday and during the interrogation beginning at 6:30 p.m. or 7:00 p.m., and that his desire not to be interrogated was overriden by the sheriff.

On direct examination before the jury, Sheriff Coates testified that when he questioned the petitioner at midday, the petitioner made a few statements and then refused to say anymore. Sheriff Coates' testimony on this point was as follows:

> I talked to him in my office there for a little while, and Doctor Wooding had indicated to me that this poisoning was placed in some beans. And, I questioned him about the beans. And, he made the statement, he said, "No. The poison was not put in the beans, but put in something else."—or something to that effect, he said. And, he didn't explain what it was in. He didn't say. That's all he would tell me. (T. 225-226)

The sheriff further testified that the petitioner also wanted to avoid being questioned during the second interrogation beginning at 6:30 or 7:00 p.m. (T. 243)

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* There being no such evidence, no reference to the record is possible. However, for an elaboration on this point see Appendix B.

Again, on cross-examination before the jury, Sheriff Coates, in an elaboration on his testimony, stated that the defendant was generally uncooperative and did not want to answer questions. This testimony was as follows:

> Q I'm talking about what you asked him during the day?
>
> A I don't remember whether I asked him about that before. He wouldn't tell me anything. He wouldn't cooperate.
>
> Q Didn't want to talk to you?
>
> A No.
>
> Q Didn't want to talk to you?
>
> A No. And, I didn't talk to him. (T. 254)

Despite Sheriff Coates' statement that he "didn't talk to him," the sheriff's own testimony was that after the defendant attempted to invoke his right of silence at midday (T. 225-226) the sheriff on his own initiative (T. 226) again interrogated the petitioner beginning at about 6:30 p.m. or 7:00 p.m. (T. 93, 110, 226)

Much of the evidence regarding the events leading up to the confession was in conflict. As to most of these events the only possible witnesses were the petitioner and Sheriff Coates, there being no one else present during the crucial interrogations (T. 152 and see fn. p. 8 *supra*) and there being no permanent recording made by police until after the confession was first obtained. (T. 109)

As to much of the substance of his two private interrogations of the petitioner, the sheriff testified to a lack of memory; (T. 101, 115-116, 126, 244, 245, 247, 248) specifically, the sheriff testified that he could not remember what

questions he asked the petitioner (T. 244) or whether he asked certain questions. (T. 244-245, 248)*

A summary of the testimony regarding the events leading up to the confession delineating the source of testimony in the areas of conflict, is organized as follows:

The sheriff's office received word from the Halifax County coroner on January 18, 1966 that Jeffrey Ronald Brenner, step-child of the petitioner, had died of arsenic poisoning on December 22, 1965. (T. 91, 225) On the morning of January 19, 1966 the sheriff went to the home of the petitioner and took in custody the petitioner's wife, the mother of the dead child. (T. 91-92, 225) Sometime in the morning, the petitioner's wife, Mrs. Mary Brenner Satterfield, signed a written statement (T. 23, 242) tending to incriminate the petitioner. The statement included the fact that the petitioner was beneficiary of insurance on members of the family. (T. 242) Mrs. Satterfield's story, as developed at the trial, was that she and all three of her children had become sick on the night of December 21, 1965 after eating pinto beans and Ritz crackers and drinking a Diet-Rite Cola. (T. 9-14) The child died at approximately 4:30 p.m. on December 22, 1965. (T. 53)

Sometime in the mid-morning of January 19, 1966, the petitioner went to the courthouse square in Halifax, Virginia and entered the building used to house the jail and the

* The sheriff testified that although he could not remember the "exact" questions he asked the petitioner he could remember a substance of them. (T. 244) However, the sheriff testified that he could not remember whether he asked the petitioner if he had insurance on his wife, (T. 243) or if he (the petitioner) had bought poison before the death of the deceased. (T. 244-245) The sheriff also testified that he could not remember whether he explored in his questioning of the petitioner facts obtained in a statement made earlier by the petitioner's wife. (T. 247)

sheriff's office in order to see about his wife. (T. 152-153, 165-166) He was not taken to his wife but was told to wait. (T. 153-154)

After talking to the petitioner's wife at the Commonwealth attorney's office, the sheriff went to the jail and finding the petitioner there took him into the sheriff's office for a private interrogation. (T. 92, 152, 154, 225, 242) The length of this first interrogation was not established in the record. During the first interrogation, the petitioner denied any guilt (T. 93) but the sheriff found suspicious a statement by the petitioner that the arsenic poisoning was not put into pinto beans located in the Satterfield home at time of the death of the child. (T. 93-94, 114-115) The petitioner was formally placed under arrest at 12:40 p.m. (T. 92, 226) The sheriff contacted the Halifax County Commonwealth's attorney who advised him that bond should be set for $10,000. (T. 249)

When the petitioner balked at answering questions, (T. 225-226, 245). the sheriff implied that a refusal to disclose information would indicate the petitioner's guilt. The sheriff did this in the following manner: He asked the petitioner if he would be willing to take a lie detector test but warned the petitioner that if he had anything to hide, the test would "bring it out." (T. 243)

The petitioner testified that during the midday interrogation the sheriff cursed him and otherwise verbally abused him. (T. 154) This testimony was uncontroverted in the record.

The petitioner also testified that he had not eaten since before the day previous to the confession (T. 153) and that when he ate a hot dog and drank a Coca-Cola shortly before the first interrogation he vomited it back up. (T. 153) The petitioner testified that he was cold, because of cold winter weather and because he was only wearing a short

sleeved shirt, and dungarees. (T. 155-157) None of the above was controverted in the record. The sheriff testified that he could not remember the weather conditions (T. 115) and that he could not remember what kind of shirt the petitioner was wearing. (T. 115-116)

The petitioner testified that the sheriff indicated to him that a confession by him would facilitate his freedom on bond. (T. 158, 178) The sheriff appeared to deny this. (T. 98, 99, 106, 236) However, Mrs. Odell Abbott, the court reporter at the petitioner's preliminary hearing, testified that at that hearing the sheriff testified as follows:

> Q Did you tell him if he made a confession he could get out on bond?
>
> A I do not know. (T. 410)

When asked during the trial what his testimony on this point had been at the preliminary hearing, the sheriff first stated that he did not remember what was said at the preliminary hearing (T. 98-99) but shortly thereafter denied having made the testimony cited above. (T. 99) However, at one point the sheriff's testimony could reasonably be interpreted as meaning that he did not promise to personally post the petitioner's bond in return for a confession. This testimony by Sheriff Coates was as follows:

> Q Isn't it a fact that in the preliminary hearing you were asked the same question and you said you didn't know?
>
> A I don't know what was said. I know I hadn't promised him any bond. The bond had been set. It wasn't up to me to bond him. (T. 98-99)

It was uncontroverted that at about 5:00 p.m. that day, the petitioner's father, Mr. Bedford Satterfield, came with a friend to the building housing the jail and the sheriff's

office in the hopes of having his friend post bond for his son's release. (T. 142-145, 440) Mr. Satterfield testified that he asked the sheriff what chances he had of getting the petitioner out on bond and that the sheriff replied that he, the sheriff, would prefer that Mr. Satterfield leave the petitioner in jail overnight so that he could have a lie detector test made the next day. (T. 142-145, 440) Mr. Satterfield testified that he then dropped his attempt to post bond and went home (T. 142-148, 440) because he did not want to appear to be acting "funny about it." (T. 453)

The sheriff testified as follows regarding Mr. Satterfield's attempt to post bond:

> Q Now, isn't it a fact that Mr. Bedford Satterfield came here the afternoon before Frank Satterfield made the statement?
>
> A That's right.
>
> Q Came here and asked you something about the bond the same afternoon that you arrested him before the statement was made? Didn't Bedford Satterfield come here this afternoon and ask you about the bond?
>
> A He asked me what the bond was, and the Commonwealth attorney said the bond was ten thousand dollars ($10,000) and that's what I told him.
>
> Q Well, now isn't it a fact when he came here and asked you about the bond that you said, "Bed, I'd rather you leave him here overnight. I got a polygraph test in the morning."
>
> A I told him we were going to take him the next day for a polygraph test.
>
> Q I know. But, didn't you express a desire that he leave him there.
>
> A I don't recall that.
>
> Q You don't recall whether you did or not?

A I told him we were going to take him for a polygraph test the next day. (T. 104-105)

It was uncontroverted in the evidence that upon completion of the taping of the confession that night, the sheriff called the petitioner's father. (T. 103-104, 144, 146-147, 237-238, 278, 440, 451, 454) Mr. Satterfield testified that at that time the sheriff said that the petitioner had confessed and that Mr. Satterfield could come get him. (T. 144, 146-147, 440, 451, 454) The sheriff testified that he told Mr. Satterfield that his son had confessed and that his son wanted him to come get him. (T. 103-104) At another point the sheriff testified that he called Mr. Satterfield at the petitioner's request but said nothing at all about Mr. Satterfield's coming to get his son. (T. 238)

The sheriff admitted in his testimony that the petitioner wanted to be bonded out. In this regard the sheriff testified, "Now what he (the petitioner) wanted, he wanted bond. I told him he could get—well, he knew he could get bond." (T. 103)

The evidence showed that at the preliminary hearing, the sheriff admitted that he had assured the petitioner while interrogating him that he, the sheriff, was a friend of the petitioner's family. (T. 409-410) However, at the trial the sheriff gave contradictory testimony on this point. While the jury was out the sheriff testified that he didn't recall having assured the petitioner of his friendship with the petitioner's family and he couldn't remember what he had said on that subject at the preliminary hearing. (T. 100-103) Later that day, in the presence of the jury, the sheriff absolutely denied having assured the petitioner that he was a friend of his family and denied having admitted this at the preliminary hearing. (T. 238-241)

At the end of the first interrogation, the petitioner was placed in a solitary confinement cell. (T. 155) The bed in

the cell did not have a mattress, blanket, sheets or pillow. (T. 97, 139-140, 179) The petitioner testified that he was very cold in the solitary confinement cell. (T. 155-156) He testified that supper was brought to him but that he could not eat it. (T. 166) This testimony was never directly contradicted.*

The petitioner testified that when the sheriff brought him into the sheriff's office for the second private interrogation (this interrogation began at about 6:30 p.m. or 7:00 p.m.—T. 93, 110, 226) the sheriff immediately turned up the heat in the office. (T. 158) This testimony was uncontroverted in the record. The petitioner testified that he asked the sheriff for bedding in his cell, but that this request was denied. (T. 158) The petitioner testified that he never was given any bedding that night. (T. 179-180) Tending to corroborate this testimony was the testimony of Deputy Roy Pruitt who stated that "on the day he's locked up, you don't usually fix the beds at night when they lock the cell on the day you were locked up." (T. 140) The sheriff testified that he did not know what accommodations the petitioner had but that as a general practice, "before they go to bed at night, they have a mattress, two sheets, a pillow, pillow case, and a blanket." (T. 97)

The petitioner testified that during the second interrogation, he complained to the sheriff of being sick. (T. 177) Before the jury, the sheriff denied this, (T. 235) however, while the jury was out, the sheriff testified that he did not remember whether the petitioner needed a doctor. (T. 126) Soon after that the sheriff stated, "I didn't see any reason for him to have a doctor." (T. 126)

The petitioner's brother-in-law testified that he saw the petitioner vomit the morning after the confession (T. 184)

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* The sheriff did testify to his understanding that the petitioner had had supper. (T. 96-97)

and that he asked the sheriff to get the petitioner a doctor but that the sheriff did not comply with this request. (T. 184, 188) The sheriff testified that he could not remember whether the family had asked for a doctor and did not remember whether he got one (T. 128) but that if the family had asked that the petitioner be provided medical attention he, the sheriff, would have seen that he got it "if I thought he had needed one or if he had asked for one." (T. 128) Mrs. Abbott, the court reporter at the preliminary hearing, testified that at the preliminary hearing the sheriff was asked "Did his daddy tell you he was sick?" and answered "I believe he did."

The petitioner testified that during the second interrogation the sheriff again cursed and otherwise verbally abused him. (T. 158, 167) This testimony was uncontroverted in the record.

The sheriff testified that by the end of the second interrogation he had completed plans to take the petitioner to Appomattox the next day for a lie detector test which the petitioner had agreed to take. (T. 94) The evidence indicated that by this time the sheriff had elicited from the petitioner the fact that the petitioner had purchased, prior to the death of his step-son, a bottle of liquid rat poison. (T. 232, 244-248)*

The length of the second interrogation was not established at the trial. At the end of this interrogation, the sheriff sent the petitioner back to solitary confinement, (T. 155) telling the petitioner that if he, the petitioner, had anything to tell the sheriff to let the jailer or the deputies know.

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* The sheriff testified that he might have gotten this information before the end of the second interrogation, but that he thought he was not told about this until he obtained the oral confession. (T. 244-246) However, in the taped statement (taken immediately after he oral confession was obtained that night) the sheriff stated, "You told me today you kept it (the bottle of poison) in the car." (T. 232)

(T. 94, 97, 226) Fifteen or twenty minutes later the petitioner sent word that he wanted to talk to the sheriff. (T. 94, 97, 167, 226, 268, 273)

The petitioner was brought into the sheriff's office at about 8:15 p.m. (T. 96, 228) The petitioner testified that when he was brought into the sheriff's office the sheriff again turned up the heat. (T. 177) This testimony was uncontroverted. The petitioner testified that the sheriff stated that he knew "damn well" that the petitioner was guilty. (T. 177) However, in the testimony of Deputy Monroe Anderson in regard to the events in the sheriff's office beginning at 8:15 p.m., the Commonwealth's attorney asked "did anybody holler at this man or mistreat him in any way?" and Mr. Anderson answered, "No, sir." (T. 130, 131-132) The petitioner testified that the deputies were not in the room during all of the events subsequent to 8:15 p.m. (T. 168) However, the two deputies testified that they were present from 8:15 p.m. on. (T. 130, 132, 136, 269, 273) The petitioner testified that the sheriff again indicated to him that if he confessed the sheriff would call his father and the petitioner could go home. (T. 167, 178) Deputy Pruitt testified before the jury that he had no knowledge of the petitioner being told that he could go home if he confessed. (T. 279-280) However, Mr. Pruitt did testify that the petitioner wanted to get out on bond and that after the confession the sheriff called the petitioner's father. (T. 278-279)

The petitioner first orally confessed to putting arsenic poisoning in a Diet-Rite Cola in the middle of the day on December 21, 1965 with the intention of killing his entire family in order to collect insurance on their lives. (T. 228-234) After the oral confession was obtained, the sheriff cut on a tape recorder and obtained a taped confession. (T. 110-111, 124) In the middle of the taped confession, the tape

was turned off when the petitioner declined to give a motive. (T. 118, 135) The sheriff testified that while the tape was off he reminded the petitioner that he had previously confessed orally to an intent to kill his family for insurance proceeds, and that the petitioner then continued with the statement and the recorder was turned back on. (T. 118) The taped confession was completed at 8:40 p.m. (T. 96)

The petitioner cited numerous factors as influencing him to confess—that he was cold (T. 156-157, 166), that he was sick (T. 153, 157, 158, 161, 168, 177), that he was afraid of the sheriff (T. 161) and that he had not eaten in two days. (T. 153) Summing up the reason for his confession, the petitioner said that he acted upon the sheriff's statement that if the petitioner confessed "I will let you go home. I will call your daddy and he can come get you tonight." (T. 178)

The trial produced much evidence inconsistent with the confession. All of this evidence came to light subsequent to the time the confession was obtained. For example, the story of the petitioner's wife was that she was sick along with her two children the night before the child's death. The confession specifically corroborated this story. (T. 232) However, an analysis of hair samples taken subsequent to the confession at the initiative of defense counsel (as indicated, T. 326) indicated that the petitioner's wife had not ingested an abnormal dose of arsenic on the night before the child died. (T. 73-75, 326, 327, 328, 329, 353)* The

* The medical testimony was that unusual ingestions of arsenic showed up in the hair. (T. 326) Samples of the hair were clipped as close to the scalp as possible from the heads of the petitioner's wife, the petitioner and a surviving child on or about February 9, 1966 at a time when unusual ingestion of arsenic on December 21, 1965 would have grown out into the samples of hair taken. (T. 326-328) Analysis of these samples showed that the surviving child had unusual deposits in her hair but that the hair of the petitioner's wife and the petitioner contained nothing more than the normal amount of arsenic. (T. 73-75)

medical testimony regarding the normal clinical reactions to a fatal dose of arsenic (T. 81, 338) tended to discredit the story of the petitioner's wife that the child appeared to sleep normally (T. 10) and was able to walk into the doctor's office the next afternoon shortly before he died. (T. 38) The evidence also showed that there were three bottles of Diet-Rite Cola in the refrigerator, and that the other two showed on examination to have been unopened. (T. 287-288) tending to discredit the possibility that the petitioner poisoned one of three drinks and that his family happened to pick that one.

Also tending to be inconsistent with the confession was the testimony by the petitioner's wife that when she opened the Diet-Rite drink, she took no notice of it having been previously opened. (T. 438) Mrs. Satterfield's testimony (T. 1-50, 438) tending to corroborate the confession (and exonerate herself) was contradicted on material matters not only by members of the petitioner's family, (T. 280, 281-284, 288-291, 308, 310, 311-312, 380, 401, 422, 424, 425) and by two friends of the petitioner (T. 257-259, 368, 370-371) but also by Mrs. Mary Wilson (T. 356-358) the mother of five children who were in the Satterfield home the night before the child's death. An example of the evidence tending to discredit the confession was the testimony by members of the petitioner's family that the petitioner's wife stated "Frank's people will think I gave the children rat poisoning" before the medical authorities suspected arsenic poisoning as the cause of death. (T. 283-284, 310, 311-312, 380, 401, 422, 424, 425)

The above summary of the evidence, although lengthy, is not intended to be exhaustive. Additional references to the record will be made in the argument where relevant.

ARGUMENT

I.

The Law Of The Admissibility Of Confessions As Set Forth In Miranda v. Arizona Is Applicable In This Case.

The guidelines set forth in *Miranda* are applicable in this case. *Miranda* came down on June 13, 1966. Seven days later, in the case of *Johnson* v. *New Jersey*, 384 U. S.719 (June 20, 1966) *rehearing denied* 385 U.S. 890 (1966) the Supreme Court held that *Miranda* must be applied in all cases in which the defendant's trial is begun subsequent to June 13, 1966. The petitioner's preliminary hearing was held on June 24, 1966 and his trial was begun on July 29, 1966. (p. 4, *supra*) It follows from the *Johnson* ruling that the requirements set forth in *Miranda* are applicable to this case and unless the procedures required in *Miranda* were proved to have been complied with, the petitioner's statements while in police custody should have been excluded from evidence.

II.

The Confession Should Have Been Ruled Inadmissible Because The Sheriff Created A Situation In Which The Petitioner's Freedom On Bond Depended On A Confession.

Miranda holds that "any evidence that the accused was . . . cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege (against self-incrimination)." 384 U.S. 436, 476. The record in this case is replete with evidence of psychological pressure on the part of the sheriff, but the most serious example of this was the use of the petitioner's desire for freedom on bond as a lever to elicit the confession.

The sheriff denied that he promised bond in exchange for a confession. However, he virtually admitted defense testimony that as a practical matter, he blocked any bonding out

of the petitioner before the confession was obtained, despite his knowledge that the petitioner wanted to be bonded out, and facilitated the petitioner's freedom on bond as soon as he obtained the confession. (p. 16-17, *supra*) The petitioner's father came to the jail prior to the confession with the intent to have his son bonded out. (p. 15-16, *supra*) The sheriff admitted that when the petitioner's father asked him about the possibility of bonding his son out, his reply was that he had plans to take the petitioner to Appomattox the following day for a lie detector test. (p. 16-17, *supra*) Because he did not want to appear to be "acting funny" the petitioner's father dropped his attempt to post bond and went home. (p. 16, *supra*) Immediately after the confession was obtained, the sheriff on his own testimony called the petitioner's father and told him his son wanted to be bonded out. (p. 17, *supra*) This much is established from the actions of the sheriff outside the confines of his office. What went on during the private interrogations is another matter. Here we have only two possible witnesses, the sheriff and the petitioner. Ordinarily, in such a situation the sheriff will always win a "swearing" contest. However, in this case there are added factors. At the preliminary hearing the sheriff was asked "Did you tell him if he made a confession he could get out on bond?" and answered, "I do not know." (p. 15, *supra*) At the trial he denied having given this testimony at the preliminary hearing and denied having promised the petitioner bond. (p. 15, *supra*) However, on the ultimate question whether the prospect of bond was used in some manner as pressure to obtain a confession, there is equivocation to be found in the sheriff's testimony. This came in the following form:

> Q Isn't it a fact that in the preliminary hearing you were asked the same question and you said you didn't know?

> A I don't know what was said. I know I hadn't promised him any bond. The bond had been set. It wasn't up to me to bond him. (p. 15, *supra*.)

Viewed in light of all of the evidence, the above does not appear to be an outright denial of the use of the prospect of bond as a lever to break down the petitioner's resistance. The sheriff unquestionably denied that he promised to personally raise the money for the petitioner's bond. However, this was not the ultimate question. No one had ever suggested that the sheriff had made that sort of promise. It is submitted that the sheriff's equivocation indicated a reluctance to face the real thrust of the question put to him—whether he had in fact dangled in front of the petitioner the hope of freedom on bond in the event of "cooperation." It is submitted that the petitioner's testimony that the sheriff told him that if he confessed "I will call your daddy and he can come get you tonight," (p. 21, *supra*) had in it the ring of truth.

In view of all of the testimony regarding the manipulation of the petitioner's prospects of freedom on bond, the confession should have been ruled inadmissible because this persuasive evidence of cajolery in itself precluded a finding of waiver.

III.

The Confession Should Have Been Ruled Inadmissible Because It Came After The Sheriff Overrode The Petitioner's Attempts To Invoke His Right To Silence And Implied That Silence Was An Indication Of Guilt.

Miranda makes it plain that any attempt by a suspect to invoke his right to silence secures his right not to be questioned further in the absence of counsel. 384 U. S. 436, 473-74, 474-76 Even though a suspect be not sophisticated enough to demand a lawyer, his attempt to remain silent in

the face of incommunicado incarceration amounts to a disinclination to give evidence against himself; if interrogation continues without counsel being secured for the suspect, the implication conveyed to the suspect is that he does not have the right to cut off interrogation. The implication that refusal to answer questions implies guilt strengthens the pressure against further attempts to invoke the right to silence.

In this case, the petitioner's attempts to remain silent in the face of interrogation were met not only with renewed questioning, but with statements calculated to imply to the petitioner that refusal to tell all he knew would imply guilt.

According to the sheriff's own testimony, the petitioner indicated to the sheriff during the first interrogation in the middle of the day that he did not want to be interrogated. (p. 11, 12, *supra*) Nevertheless, the sheriff by his own testimony renewed interrogation in the afternoon beginning at about 6:30 or 7:00 p.m. (p. 12, *supra*) The practice of overriding attempts to invoke the right to silence continued right through the formal taping of the confession. Thus, when the petitioner refused to answer a question on tape, the recorder was turned off while interrogation continued until the petitioner was willing to continue with his statement. (p. 20-21, *supra*) The action of the sheriff in overriding the petitioner's attempts at silence was a clear violation of the procedures set forth in *Miranda* and was sufficient in itself to render the confession inadmissible.

The sheriff's own testimony shows that the sheriff indicated to the petitioner that silence was a de facto admission of guilt. The sheriff testified as follows:

> "Well, he had agreed like I told you to go take the polygraph test or lie detector test to eliminate himself or involve himself, which ever the case may be. And,

> I asked him that night around six o'clock if he still wanted to tell me anything he hadn't told me. And, I advised him if he had anything to hide, it would be my advice to him not to take the lie detector test, because it would bring it out. If he had nothing to hide, then the thing for him to do, it would eliminate him just as well as it would involve him." (T. 243)

Obviously, a man with an Intelligence Quotient of 67 (p. 8, *supra*) would get the impression that a refusal to take the test would be an indication of guilt. The intention of the sheriff was plain. If the defendant was guilty and did not want to reveal this guilt by the refusal to take a lie detector test, he would soon feel trapped in the knowledge that he would eventually be convicted out of his own mouth in any event. This method of police interrogation is an excellent example of the manner in which our rights against self-incrimination can be eroded.

In fact, the petitioner's attempts to invoke his right to silence were used against him in court. When the sheriff was asked on cross-examination before the jury whether he had questioned the petitioner about a particular matter, the sheriff stated "I don't remember whether I asked him about that before. He wouldn't tell me anything. He wouldn't cooperate." (T. 245)

Thus, not only was the attempt to invoke the right to silence overriden and depicted to the petitioner as a sign of guilt, it was used by the sheriff in non-responsive testimony before the jury as an indication of the petitioner's guilt.

It is submitted that police authorities cannot within the Constitution override attempts to invoke the right to silence and then use such attempts as a prima facie indication of guilt, not only to convince a suspect that the burden rests on him to overcome the implication of guilt arising from his attempt to invoke the right to silence, but also to convince

a jury that the subject is, in fact, guilty. It is submitted that the use in this case of attempts to invoke the Fifth Amendment right as a weapon against the full exercise of that right in itself rendered the confession inadmissible.

IV.

The Confession Should Have Been Ruled Inadmissible Because The Petitioner's Constitutional Rights, Particularly His Right To Counsel, Were Not Made Clear To Him Before He Was First Interrogated, Or Even Before He First Confessed.

Miranda states in explicit terms that the constitutional rights of a suspect are not protected unless the suspect is advised of his rights and "knowingly and intelligently" waives them prior to any in-custody interrogation in the absence of counsel. 384 U.S. 436, 475. It is obvious from the record in this case that the petitioner did not understand his right to counsel before he was interrogated, that he remained unaware of that right throughout the interrogation and that he confessed while ignorant of that right.

Even if the Commonwealth's evidence be accepted in its entirety, with all of the inferences possible therefrom, the most that could be said of it would be that the petitioner was finally made aware of his right to counsel after he had confessed and before he repeated his confession for purposes of the tape. In all of the record, there is only one small bit of evidence which says anything at all about the petitioner's reactions to being advised of his right to counsel. This evidence was the reading into the record of the taped statement obtained from the petitioner after he had already confessed orally. (See p. 9, 10, 11, *supra* and Appendix B *infra*) The relevant dialogue on the tape was as follows:

> Q You understand that you have the right to an attorney before you make any statement?

A That's right. I reckon. I don't know about that.

Q Now wait a minute. You have the right to an attorney before you make any statement. You understand that?

A Oh, yes. (p. 10, *supra*)

This evidence, introduced by the Commonwealth, shows on its face that at the outset of the taped statement, the petitioner did not understand his right to counsel. It would be inconceivable that the petitioner would deny understanding of that right in order to lay the groundwork for a later repudiation of the confession. Had this been his intent he would hardly have confessed a few minutes earlier (p. 8, *supra*) nor would he have continued to cooperate with the police by giving his statement on tape. (p. 8, 20-21, *supra*) All of his actions at that point were in total cooperation with the desires of the sheriff.

There is no question but that this statement on tape of ignorance of the right to counsel came after the petitioner had already confessed because the sheriff's own testimony was that the tape was not turned on until after the petitioner's initial oral confession. (p. 8, *supra*) Therefore, the only conclusion possible from the record is that the petitioner remained ignorant of his right to counsel until after he first confessed, if not longer. It follows that during all of the time the petitioner was in custody prior to the first time he confessed, including the times he was being interrogated privately by the sheriff, he was unaware of his right to counsel.

The above was sufficient in itself to render the confession inadmissible. *Miranda* states that a suspect must be "clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during the inter-

rogation." 384 U. S. 436, 471. Lest there be any doubt about the necessity for police to reasonably satisfy themselves that a suspect understands the warnings given him, the Court stated the following:

> If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. 384 U. S. 436, 475

The petitioner could not have "knowingly and intelligently" waived his right to counsel before interrogation, or even before he first confessed, because he did not at those times understand his right to counsel, as proved by his statements made subsequent to the initial confession.

Even if the petitioner did not now have access to the prosecution evidence of the statement by him of ignorance of the right to counsel, the confession would have been legally inadmissible, because the Commonwealth totally failed to prove, or even to offer evidence tending to prove, that the petitioner understand his right to counsel or any of his constitutional rights prior to interrogation or even prior to the initial confession.

Nowhere in the record is there any evidence whatever tending to prove explicitly or implicitly that the petitioner understood any of his constitutional rights before he had finished his initial confession. In the total absence of any such evidence, the Commonwealth obviously did not bear its "heavy" burden of proving that the confession was pursuant to a knowing and intelligent waiver of rights.

This total lack of affirmative evidence of intelligent waiver was hardly an oversight. After the evidence on ad-

missibility was presented to the court, counsel for the defense stated unequivocally in argument that one of its reasons for objecting to the admissibility of the confession was the failure of proof of intelligent waiver prior to interrogation. This argument by counsel for the defense was as follows:

> Now that is the heart of the reason that this confession is admissible. It (*Miranda*) says the government has a heavy burden to demonstrate that the defendant knowingly and intelligently waived his privileges against self-incrimination . . . . and, it says that this Court has always set high standards of proof for the waiver of constitutional rights, and we reassert these standards as applied to in-custody interrogation. In other words, that means they put him in here in this Sheriff's room. This man is looking at all those scary pictures of all these people on the wall, and they got him in there. And, they are responsible for having him there. It says since they are responsible for that for establishing the isolated circumstances as applied in custody, the isolated circumstances under which the interrogation takes place and have the only means of making available corroborating evidence of warnings given to his incommunicado. The burden is right on the Sheriff, and they had the opportunity when they had him there at twelve-thirty to get a tape recorder on at that time. It's not any harder to cut it on at twelve-thirty than it is to cut it on at eight o'clock after you have had him all primed and ready to talk. They could have cut it on at twelve-thirty. They could have made it clear on that tape that he understood his right to counsel. But it wasn't done. An expressed statement that the individual is willing to make a statement and does not want an attorney. This man never said I don't want an attorney or lawyer. Followed closely by a statement could constitute a waiver, but a valid waiver will

> not be presumed simply from the silence of the accused after warnings are given.
>
> * * *
>
> Now we are talking about what happened at twelve o'clock. The record must show that an accused was offered counsel but intelligently and understandingly rejected the offer. (T. 205-207)

Subsequent to this defense before the court, all of the Commonwealth witnesses who had testified in the absence of the jury testified again in the presence of the jury and still no evidence whatever was offered to show that the petitioner knowingly and intelligently waived his rights prior to interrogation or even prior to the initial confession. It can hardly be argued that this total lack of evidence on this crucial point was a mere technical omission. This total lack of evidence where *Miranda* requires the bearing of a "heavy" burden of proof was sufficient in itself to render the confession inadmissible.

It might be argued that the petitioner's action in sending for the sheriff just prior to his initial confession (p. 8, 20, *supra*) had the earmarks of waiver. However, *Miranda* makes it plain that any waiver must be proved to have been a knowing and intelligent one. *Ibid.*

Counsel for petitioner does not contend that law enforcement officials must act as psychiatrists to fathom the private mind of a suspect who states unequivocally that he understands his rights but later testifies in court that in fact he did not. Obviously, the authorities must use objective tests to determine whether a suspect understands his rights. However, in this case, the only evidence produced by the Commonwealth to indicate the petitioner's reactions upon being advised of his rights plainly showed that the petitioner had been unaware of his right to counsel prior to his initial

confession. No evidence was produced to show that the authorities satisfied themselves prior to the initial confession that the petitioner understood any of his constitutional rights. (p. 11, *supra* and Appendix B, *infra*)

Indeed, the evidence indicates that even after the petitioner had already confessed, the authorities made no real common-sense attempt to make clear to him his right to counsel. Had the sheriff been interested in effectively communicating to the petitioner his right to counsel, he would have explained in detail to the petitioner the meaning of that right. When the petitioner indicated his ignorance of the right to counsel, the sheriff would have restated that right in words other than those the petitioner had just indicated he did not understand. But the sheriff simply repeated again the same words "you have a right to an attorney before you make any statements." At the trial the sheriff was asked about this and had no explanation. He testified as follows:

> Q . . . Now it's a fact that when you went back and repeated it, you didn't change it a bit. You just said the same words?
>
> A I said the same words. I said "You understand that?" He said, "Oh, yes."
>
> Q Now, Mr. Coates, when somebody doesn't understand something, isn't it usual to say, "in other words" and explain to them what it means?
>
> A Well, I repeated the same thing to him, and he said he understood it.
>
> Q You repeated the same thing and he said, "yes," so you are assuming he understood that?
>
> A Uh-huh. (T. 112-113)

The more logical assumption would have been that the petitioner, having already confessed, had no reason to deny

the sheriff the answer he obviously wanted. However, the sheriff appeared more interested in getting a confession which would stand up in court than in informing the petitioner of what the word "attorney" meant. In order to have the confession ruled inadmissible, it was not necessary for the defense to prove that the petitioner remained unaware of his right to counsel even after he said "oh, yes" on the tape, (since in any event the petitioner was proved not to have understood his right prior to that time) but this would be the most reasonable interpretation of the evidence.

Indeed, the evidence on balance tends to uphold the petitioner's testimony (p. 10, *supra*) that he was never advised of any of his constitutional rights prior to the time of the taped confession. This is indicated by the fact that when the petitioner stated on tape that he did not understand his right to counsel, the sheriff made no mention of having told the petitioner previously of his right to counsel. In addition, the very fact that the petitioner indicated on tape that he did not understand his right to counsel is consistent with his testimony that this was the first time he had been advised of that right. This testimony was controverted by the sheriff. (p. 10, *supra*) However, the sheriff's testimony was not corroborated by anyone, not even the two deputies who testified (p. 20, *supra*) that they were present just before the initial oral confession. The sheriff had within his power the means to lay at rest any possible future controversy over what went on in the jail. He could have taped all of the interrogations, but he did not. When asked about this at the trial, the sheriff stated, "there is nothing to tape. Just tell him of his rights, when you are ready to incriminate, tell him again." (T. 109)

Because law enforcement authorities have the only means

of corroborating their version of in-custody interrogations in the absence of counsel, *Miranda* places upon the Commonwealth a "heavy" burden of proving that warnings were effectively given, understood by the suspect, and knowingly and intelligently waived by him. 384 U. S. 436, 475

It is submitted that the Commonwealth did not even bear its burden of proving that the petitioner was warned of any of his constitutional rights before the confession was first obtained. However, even if the above argument be rejected, and even if it be held that the petitioner was made aware of his right to counsel during the taped statements, nevertheless, the only evidence available in the record is that the petitioner was not made aware of his right to counsel prior to his initial confession. Therefore even if the evidence is viewed in the light most favorable to the Commonwealth, the Commonwealth's evidence itself proves that the petitioner's rights as set forth in *Miranda* were not protected. This proof, and the total lack of evidence tending to affirmatively prove a knowing and intelligent waiver were independently sufficient grounds for exclusion of the confession from evidence.

V.

The Confession Should Have Been Ruled Inadmissible Because The Petitioner Was Never Informed Of His Right To Court-Appointed Counsel.

Miranda requires that before a defendant's statements while in custody can be held admissible in court, it must be proved that the defendant was warned of his right to court-appointed counsel if there is any doubt at all about his ability to retain counsel. 384 U. S. 436, 473

At the time of his arrest the petitioner had a menial job in

a textile mill in Halifax County. (p. 9, *supra*) His counsel was later retained not by the petitioner but by a brother-in-law. (T. 188)

The record shows that the petitioner was not warned of his right to court-appointed counsel. (p. 10-11, *supra*) It is submitted that therefore the confession should have been ruled inadmissible.

VI.

The Confession Should Have Been Ruled Inadmissible Because The Totality Of Circumstances Surrounding The Confession Precluded Any Finding That The Petitioner Waived His Fifth Or Sixth Amendment Rights.

Miranda makes it clear that no waiver of constitutional rights can be found unless the total circumstances surrounding the confession indicate that the defendant voluntarily and without pressure of any kind waived his right to silence or to have an attorney present before making any statement. *Miranda* states the following:

> "(A)ny evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirements of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privileges and not simply a preliminary ritual to existing methods of interrogation. 384 U.S. 436, 476

A casual reading of the facts in this case shows that even if it had been proven at the trial that the petitioner was advised of all of his constitutional rights and made to understand them, and even if the promise of freedom on bond and the overriding of attempts to invoke the right to

silence were not enough in themselves to render the confession inadmissible, the totality of the circumstances surrounding the obtaining of the confession rendered the admission of the confession into evidence a violation of the petitioner's Constitutional rights as set forth in *Miranda*. The record is replete with evidence of "existing methods of interrogation" detailed and criticized in *Miranda*. A short summary of those elements of pressure not already discussed in argument follows:

(1) The sheriff cursed the petitioner and otherwise verbally abused him during both private interrogations. (p. 14, 19, *supra*)

(2) Alternating with the sheriff's "Mutt" demeanor—curses and verbal abuse—was conduct calculated to encourage the petitioner to confide in the sheriff. The petitioner was told that the sheriff was a friend of his family (p. 17, *supra*) which tended to obscure the fact that the sheriff's intentions were not necessarily in the interests of the petitioner's ultimate welfare. The sheriff's complete physical control over the petitioner was underscored by alternately bringing him into a warm room (p. 18, *supra*) and sending him back to a solitary confinement cell without mattress, blankets or sheets. (p. 17, 18, *supra*) The obvious implication was that the prisoner who "cooperated" with the sheriff would be treated in a nicer manner than one who did not.

(3) The evidence indicates that the confession was at least partly untrue, indicating that it was not a free and voluntary pouring out of details, but a confession obtained through a conscious or unconscious process of pressure and suggestion.

Counsel for petitioner admits that the ultimate question of guilt is a matter for the jury and that therefore those facts inconsistent with the confession are not relevant on appeal in this case on the question of guilt. However, guilt aside, there are compelling indications in the record that the confession was not factually correct, which is proof again that the confession was not obtained pursuant to a voluntary waiver of rights.

Aside from the evidence already mentioned (p. 21, 22, *supra*) which tended to discredit the confession, there is one fascinating bit of evidence in the record which almost certainly proves that the confession was incorrect as to one important detail. The petitioner confessed to putting poison in a Diet-Rite Cola with the intention of killing his entire family for insurance proceeds. (p. 20, *supra*) However, the petitioner's wife testified that the Satterfield refrigerator contained Diet-Rite drinks and Pepsi-Colas and that the Diet-Rite drinks were intended for her so that she could lose weight. (T. 16) Thus, if the petitioner was guilty he obviously did not intend to kill his whole family but only his wife. It is significant that the sheriff felt it necessary to turn off the tape recorder at one point because the petitioner declined to give a motive for attempting to kill his entire family. (p. 20, 21, *supra*)

Again, this important error in the substance of the confession would have no bearing on the petitioner's ultimate guilt. Nevertheless, if the confession is erroneous as to this detail, then why is it erroneous?

It is significant that all of the essential details of the confession were subject to prior police deduction. The sheriff knew that the petitioner was the beneficiary of insurance on members of his family. (p. 13, *supra*) He had access

to the version of facts given by the petitioner's wife, whose story at the trial was that she and her children were sick after eating pinto beans and Ritz crackers and drinking a Diet-Rite Cola. (p. 13, *supra*) The petitioner eliminated the pinto beans in the middle of the day. (p. 14, *supra*) Apparently, the petitioner admitted by the end of the second interrogation that he had bought a bottle of liquid poison (p. 19, *supra*) which would eliminate the Ritz crackers, leaving only the Diet-Rite Cola. If the petitioner were guilty and his wife innocent, he would have had to put the poison in the Diet-Rite Cola sometime before the evening of December 21, 1965, the night the petitioner's wife testified she and her children were sick.

On the other hand, those facts detailed in the statement of facts which were inconsistent with the confession apparently did not come to light until after the confession was obtained. (p. 21-22, *supra*) In view of all of the record, it is submitted that the confession was at least partly the result of a conscious or unconscious process of suggestion. To be sure, the sheriff denied this, ("Wasn't anything suggested to him in any way—T. 247) but he was unable to document this testimony because he repeatedly testified that he could not remember the essential details of what went on in the sheriff's office before the confession was obtained. (p. 12-13, *supra*)

All of the methods of police interrogation outlined above and elsewhere in argument might have been unavailing against a man of normal intelligence, wise to the usual methods of police interrogations. However, the petitioner was not equipped on January 16, 1966 with the will of a normal man. Aside from his lack of normal intelligence (p. 8-9, *supra*) the petitioner on that day was cold and sick and had not been able to retain food in his stomach for two days. (p.

14, 15, 21, *supra*) It is submitted that the totality of the circumstances surrounding the obtaining of the confession are inconsistent with any voluntary waiver of constitutional rights required by *Miranda* before a confession can be admitted into evidence. The evidence of the petitioner's weakness of will and the sheriff's uses by various means of pressure to obtain a confession showed a violation of spirit as well as in letter of the requirements of *Miranda*. It is submitted that admission of the confession into evidence was error and that the Supreme Court of Appeals of Virginia should have reversed the conviction and ordered a new trial.

CONCLUSION

The spirit and heart of *Miranda* is the requirement of proof of intelligent and voluntary waiver of Fifth and Sixth Amendment rights prior to interrogation. Without such a requirement, *Miranda* would have been a set of empty rules. The thrust of this petition is upon the lack of any intelligent and voluntary waiver. The sheriff of Halifax County, Virginia observed much of the form required in *Miranda*, but manifestly violated *Miranda's* substance. It is submitted that the ruling of the Circuit Court of Halifax County and the Supreme Court of Appeals of Virginia fell short of a full enforcement of Fifth and Sixth Amendment rights as set forth in *Miranda*. It is submitted that this failure to give *Miranda* its full import is particularly dangerous to the future exercise of Fifth and Sixth Amendment rights in the Commonwealth of Virginia, because on the facts of this case, affirmance of the conviction of the petitioner can only be interpreted as restricting the meaning of *Miranda* to its form absent the requirement of proof of waiver. Were *Miranda* to have that meaning, then a disparity between those rights accorded the intelligent and the powerful on

the one hand and the ignorant and the poor on the other hand would be written into the jurisprudence of Virginia. It is submitted that the Supreme Court of Appeals of Virginia erred in not reversing the conviction of the petitioner as inconsistent with Fifth and Sixth Amendment rights and in not granting a new trial.

Wherefore, your petitioner respectfully prays that the final judgment of the Supreme Court of Appeals of Virginia upholding the conviction of your petitioner be reversed and the case remanded to that court with directions to remand to the Circuit Court of Halifax County for a new trial.

Respectfully submitted,

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APPENDIX B

One point of significance in the Record is the fact that all of the evidence regarding the petitioner's reactions to warnings of his constitutional rights related to what the petitioner said on tape, after he had already orally confessed. It is evident in a quick reading of the Record that these are the facts; however, in the questioning of the sheriff by the Commonwealth's attorney, the sheriff was simply asked what warnings of constitutional rights were given the petitioner (T. 94-95) and the sheriff read into the record what was said on tape, (T. 95) including the petitioner's statement that he did not understand his right to counsel. This same part of the taped statement was read several times by the sheriff, including each time he was asked in any detail about what warnings of constitutional rights were given the petitioner. (T. 95, 111-112, 228-229) It is obvious from reading this testimony that the sheriff was reading from the taped statement obtained after the petitioner had already confessed. He certainly could not have been quoting verbatim from memory the dialogue between himself and the petitioner before the petitioner confessed orally. Nevertheless, since the point is an important one, it is worthwhile to prove absolutely from the record that all of the testimony regarding the petitioner's reactions to warnings of his constitutional rights related to his reactions on tape after he had already confessed. This absolute proof requires a detailed analysis of the record.

The following was admitted by Commonwealth witnesses: (1) The written confession signed by the petitioner was transcribed from the taped statement (T. 131, 227); (2) This statement was read in its entirety into evidence by the sheriff directly from the transcription (T. 227-234); (3) At other points in the trial, the sheriff read portions of this

complete statement into the record. (T. 95, 96, 111-112; 117-118) (4) All of the portions of the statement read at various times into the record can be found word for word in the entire statement read into the evidence at T. 227-234, (including all of the evidence regarding the petitioner's reactions to being advised of his constitutional rights, T. 95, 111-112, 228-229) Therefore, all of the evidence regarding the petitioner's reactions to being advised to his constitutional rights derived directly from what was recorded on tape. Since the sheriff admitted that the tape recorder was not turned on until after the petitioner had already confessed orally (T. 110-111, 124) it follows that all of the evidence describing the petitioner's reactions to warnings of his constitutional rights derived directly from what was said after the petitioner had already orally confessed. There was no evidence of any reaction by the petitioner to warnings of his rights before he first confessed.

APPENDIX C

The following is the final order by the Supreme Court of Appeals of Virginia upholding the conviction of the petitioner in the Circuit Court of Halifax County, Virginia:

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 7th day of March, 1967.

The petition of Wallace Franklin Satterfield for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Halifax County on the 10th day of October, 1966, in a prosecution by the Commonwealth against the said petitioner for a felony, having been maturely con-

sidered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court. (R. 57)